

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-4616

Appeal PA21-00468

Workplace Safety and Insurance Board

March 6, 2025

**Summary:** The appellant asked the Workplace Safety and Insurance Board for copies of specific contracts, bid submissions for certain requests for proposal, and other related information. The Board provided access to some records but denied access to parts of an unsuccessful bid submission on the basis that the mandatory third party information exemption applies (section 17(1) of the *Act*).

The adjudicator upholds the Board's decision, finding that the withheld information is exempt from disclosure under section 17(1)(a). She dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 17(1)(a).

**Orders and Investigation Reports Considered:** Orders PO-3175 and MO-3179.

### OVERVIEW:

[1] The Workplace Safety and Insurance Board (WSIB) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

1. Copies of contracts or agreements between [named entity] and the [WSIB] for 2020.
2. Copies of the request for proposal ("RFP"), bids or quotes in relation to WSIB's selection of an outside company to provide collective bargaining services.

3. RFP and contract terms for the WSIB vendor that is used to perform surveillance of WSIB claimants as well as employers.
4. RFP and contract terms for the WSIB vendor that is used to perform surveillance of WSIB employees.

[2] The WSIB located records responsive to the request and issued a decision granting the appellant partial access. The WSIB denied access to most of the responsive records, claiming that the exclusion at section 65(6) (employment or labour relations) of the *Act* applies. It also withheld portions of other records under the mandatory exemptions at sections 17(1) (third party information) and 21(1) (personal privacy). The appellant was dissatisfied with the decision and appealed it to the Information and Privacy Commissioner of Ontario (IPC).

[3] The IPC attempted to mediate the appeal. During mediation, the appellant confirmed that it did not wish to pursue access to the information withheld under section 21(1) of the *Act*. Accordingly, section 21(1) and the information withheld under that section are no longer at issue in this appeal. A mediated resolution was not achieved, and the appeal was moved to adjudication.

[4] As the adjudicator of this appeal, I decided to conduct an inquiry. I obtained representations from the WSIB and the appellant on the application of the exclusion at section 65(6) of the *Act*. The WSIB then consulted two affected parties whose interests could be affected by disclosure of the records at issue. One of the affected parties, the successful bidder, consented to disclosure of the records concerning its interests. As a result, the WSIB issued a revised access decision, on October 18, 2023, releasing the records related to the consenting affected party. In its revised access decision, the WSIB indicated that it relied only on section 17(1) to withhold some information in three records relating to the remaining affected party (the affected party). Accordingly, the section 65(6) exclusion is no longer at issue in this appeal.

[5] After receiving the revised access decision and additional records from the WSIB, the appellant confirmed that it seeks access to the remaining withheld information. Accordingly, I invited and received representations from the affected party on the application of section 17(1) to the remaining information at issue. The affected party was an unsuccessful bidder in the WSIB's RFP proposal process. The affected party agreed to the disclosure of one record<sup>1</sup> and claimed that the remaining information withheld by the WSIB in two records was third party information protected from disclosure under sections 17(1)(a), (b) and (c).

[6] I shared the representations of the affected party on section 17(1) with the appellant and invited the appellant's representations in response. The appellant decided not to provide representations on the application of section 17(1) of the *Act*, however, it

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<sup>1</sup> Record 17.

confirmed its interest in pursuing access to the withheld information at issue. I decided it was not necessary to obtain representations from the WSIB on section 17(1).

[7] In this order, I uphold the WSIB's decision to withhold the remaining information at issue under the third party information exemption in section 17(1)(a) and I dismiss the appeal.

## **RECORDS:**

At issue is the information withheld under section 17(1) in Records 5 (Pricing SP2014-144, page 2) and 7 (Proposal SP2019-144 (1), pages 15-17, 18-27 and 30). The withheld information consists of the affected party's fees, billing practices, client list, methods and processes for the provision of its services in its RFP bid submission.

## **DISCUSSION:**

### **Does section 17(1)(a) apply to the remaining withheld information at issue?**

[8] The sole issue before me is whether section 17(1) applies to the withheld information in records 5 and 7. The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,<sup>2</sup> where specific harms can reasonably be expected to result from its disclosure.<sup>3</sup>

[9] The affected party submits that sections 17(1)(a), (b) and (c) apply to the withheld information. Because I find, below, that section 17(1)(a) applies to the withheld information, I discuss only that exemption in this order.

[10] Section 17(1)(a) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization[.]

[11] For section 17(1)(a) to apply, the affected party that is arguing against disclosure

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<sup>2</sup> *Boeing Co v Ontario (Ministry of Economic Development and Trade)*, [2005] OJ No 2851 (Div Ct)], leave to appeal dismissed, Doc M32858 (CA).

<sup>3</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly, and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that the harm specified in paragraph (a) of section 17(1) will occur.

***Part 1 of the section 17(1)(a) test: the withheld information is commercial information***

[12] The affected party claims that the withheld information is trade secret, financial and commercial information. It explains that the withheld information outlines its proposal for the provision of legal services to the WSIB, including its proposed fee structure and billing practices, and commentary on its methods, techniques and processes associated with its RFP bid submission.

[13] To satisfy the first part of the section 17(1) test, the information at issue need only qualify as one of the types of information protected under section 17(1). The IPC has described commercial information protected under section 17(1) as information that relates only to the buying, selling or exchange of merchandise or services.

[14] I am satisfied that the withheld information in records 5 and 7 reveals commercial information of the affected party, relating to the buying and selling of services, within the meaning of section 17(1). I find that part 1 of the test is met.

***Part 2 of the section 17(1)(a) test: the withheld information was supplied in confidence***

[15] Past IPC orders have confirmed that information may qualify as having been “supplied in confidence” if it was directly supplied to an institution by a third party with an objectively reasonable expectation of confidentiality.<sup>4</sup> As the party arguing against disclosure, the affected party must show that it expected the information to be treated confidentially when it supplied the information, and that its expectation is reasonable in the circumstances.

[16] The affected party submits that it supplied the withheld information in confidence to the WSIB, as part of the confidential RFP process. In its representations, it notes a confidentiality provision in the RFP terms that states that the WSIB’s information is to remain confidential. It notes the RFP package wording that information submitted by it to the WSIB “may be subject to disclosure by the WSIB in accordance with [the Act]”,

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<sup>4</sup> Orders PO-2020 and PO-2043.

and it argues that the use of “may” supports its position that third party information is protected from disclosure under the *Act*. It cites IPC Order PO-3175 as an example of fees, cost proposals and client information being found exempt under section 17(1). Finally, it notes the confidentiality notice in its email submitting its RFP bid submission to the WSIB. The affected party argues that, together, these indications of confidentiality demonstrate that it supplied the withheld information to the WSIB with a reasonable expectation of confidentiality.

[17] I am satisfied that the affected party supplied the withheld information in its RFP bid submission relating to its pricing, process and clients, directly to the WSIB in confidence with the expectation that the information would be kept confidential. I accept that the affected party’s expectation of confidentiality was objectively reasonable considering the RFP bidding process context in which it supplied the withheld information to the WSIB.

[18] There is no suggestion that the withheld information is publicly available so as to negate the affected party’s expectation of confidentiality. As noted above, the appellant provides no representations on this issue. The order relied on by the affected party, Order PO-3175, is an example of the IPC’s finding that information similar to the withheld information in this appeal was supplied in confidence in satisfaction of section 17(1), even when that information was contained in the winning RFP submission. I agree with the approach in Order PO-3175 and apply it in this appeal.

***Part 3 of the section 17(1)(a) test: disclosure of the withheld information could reasonably be expected to prejudice the affected party’s competitive position***

[19] To establish the last part of the section 17(1) test the affected party must provide detailed evidence about the risk of harm if the record is disclosed. Previous IPC orders have found that harm may be inferred from the records themselves and/or the surrounding circumstances, but parties should not assume that the harms under section 17(1) are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>5</sup> Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>6</sup> However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>7</sup>

[20] The affected party submits that disclosure of the confidential information about its pricing, clients and services in the records would significantly prejudice or interfere with

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<sup>5</sup> Orders MO-2363 and PO-2435.

<sup>6</sup> *Merck Frosst Canada Ltd v Canada (Health)*, [2012] 1 SCR 23.

<sup>7</sup> *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras 52-4; *Accenture Inc v Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

its competitive position by giving its competitors an unfair advantage; namely, facilitating its competitors' ability to compete with it and to solicit its existing clients. The affected party also asserts that, because it was an unsuccessful bidder, the withheld information in its RFP proposal is not part of a contractual agreement between it and the WSIB and there is no public interest served by disclosing the withheld information.

[21] The affected party cites Order MO-3179 to support its argument that disclosure of client information provided as part of a confidential RFP process could reasonably be expected to significantly injure the competitive position of a business and significantly interfere with its future negotiations.

[22] I agree with the finding in Order MO-3179, and I apply the same approach in this appeal. Order MO-3179 found that disclosure of client and services information contained in a winning RFP proposal could reasonably be expected to significantly prejudice the competitive position of the company that submitted the winning RFP proposal. The client information considered in Order MO-3179 was client contact information, references provided by clients, details of relations with clients, and details about services performed for clients; the services information was training manual instructions on how services were to be provided (including detailed descriptions of products and instructions for their use). The client and services information before me in this appeal is similar – including client contact information, details of relations with clients and details of services performed for clients, and the appellant's method of providing services – but it is contained in an unsuccessful RFP bid submission.

[23] The nature of the withheld information along with the affected party's representations, lead me to conclude that it is reasonable to expect that disclosure of the withheld information could significantly prejudice the affected party's competitive position. I accept that disclosure of the affected party's confidential pricing, client and services information, could reasonably be expected to significantly prejudice its competitive position within the meaning of section 17(1)(a) of the *Act* by assisting the affected party's competitors to solicit its clients and/or compete more effectively against it for work in future RFPs for similar services. I find that the last part of the section 17(1)(a) test is met.

[24] Having found that all three parts of the test for the application of section 17(1)(a) are met, I find that this exemption applies to the withheld information in this appeal.

## **ORDER:**

I uphold the decision of the WSIB and dismiss the appeal.

Original Signed by: \_\_\_\_\_

Stella Ball  
Adjudicator

March 6, 2025 \_\_\_\_\_

